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REPORT
100-467

# SHORE PROTECTION ACT OF 1988

AUGUST 9, 1988.—Ordered to be printed

Mr. BURDICK, from the Committee on Environment and Public Works, submitted the following

## REPORT

[To accompany S. 1751]

The Committee on Environment and Public Works, to which was referred the bill (S. 1751) to require vessels to control the transport of municipal or other nonhazardous commercial wastes transported offshore to assure that these wastes are not illegally disposed of at sea, having considered the same, reports favorably thereon with an amendment and recommends that the bill as amended do pass.

### GENERAL STATEMENT

Title I of this legislation establishes a number of requirements to address the problem of garbage in the ocean and coastal waters and on the beaches. Vessels carrying any municipal or commercial waste are required to obtain identification numbers from the Coast Guard. Facilities that load and unload garbage and vessels carrying garbage are required to take measures to prevent garbage from being deposited into the water. The Environmental Protection Agency is required to establish specific measures by regulation. Penalties for violations of any of the bill's provisions are established. EPA and the Coast Guard would be required to undertake studies to determine if additional tracking systems for garbage barges are necessary. EPA is authorized $1,500,000 for fiscal years 1989 and 1990 to carry out this title.

Title II requires EPA to establish, within 9 months of the bill's enactment, a demonstration tracking program for medical waste generated or disposed of in New York and New Jersey. EPA is authorized to inspect any facility handling medical waste. The bill specifies penalties for violations of the Act. States are allowed to impose more stringent requirements. EPA is required to report to



S323-12

the Congress within 3 years on the demonstration program. The bill authorizes $300,000 for fiscal years 1989, 1990 and 1991 to EPA to carry out this title.

BACKGROUND

Waterborne waste materials and debris adversely affect coastal and ocean waters and shorelines. Beaches with washed-up garbage are unsightly and potentially unsafe, and can result in beach closings adversely affecting the tourist economy. The Centers for Disease Control have determined that medical waste such as contaminated needles, human blood and blood products, pathological parts and laboratory wastes possess the potential to transmit disease. In addition, debris in the marine environment can adversely affect marine mammals, waterfowl or fish causing death or injury when these resources become entangled with or injest debris.

According to the Center for Environmental Education, a beach cleanup effort in 19 coastal States last fall collected more than 700 tons of debris. This waste is generated by a number of different land and ship-based sources. In 1987, the Congress passed the Marine Plastic Pollution Research and Control Act of 1987 (Public Law 100–220) to regulate the discharge of plastics and other garbage at sea. Other laws, including the Clean Water Act, the Ocean Dumping Act and the Rivers and Harbors Act of 1899, regulate the discharge or dumping of material into rivers and ocean and coastal waters.

Last summer, garbage washed up on New Jersey beaches causing beach closings in a 25 mile area between May 27 through May 29 and in a 50 mile area from August 13 through 16. Already in 1988, New York beaches on Long Island and Staten Island have been closed because of garbage washups. Some of the garbage washups have contained medical waste including hypodermic needles, syringes, blood bags, gauze dressings, and vials of blood. Medical wastes also have washed up on a few New Jersey beaches although none have been closed. Medical waste also has been washing up on New England beaches, causing heightened concern over the dangers of accidential contamination.

In a March 1988 EPA report, "Floatables Investigation," EPA concluded that the landfill and barging operations at Fresh Kills landfill are a major source of floatables in the New York Harbor Complex. Other sources include storm sewers, land runoff, litter, and decaying piers. Under certain meteorological and oceanographic conditions, floatables can be deposited on beaches in New York and New Jersey. EPA and State officials believe that the medical wastes which have washed up on beaches may be the work of illegal dumpers.

Improper disposal of municipal waste resulting in increased waterborne waste may increase as options for municipal solid waste decrease. According to EPA, although 80 percent of all municipal solid waste is disposed of in landfills, one-third of all existing municipal landfills will be full by 1994. Many States are running out of landfill capacity and are transporting their wastes greater distances for disposal. As a result, price to dispose of garbage are

rising. These increasing costs increase the possibility of illegal disposal.

The transportation of municipal waste is likely to increase as landfill capacity decreases. A survey conducted by the Coastal States Organization (CSO), which represents Governors of 35 coastal States, commonwealths and territories, found that many of the surveyed States have experienced interstate municipal waste traffic in their waters and nearly all of the States believe that transportation of garbage through their coastal waters is a problem they will soon have to address.

This problem was highlighted by the 6,000 mile, 6 month journey of the Mobro 4000, a barge loaded with 3,100 tons of garbage which was unable to find a disposal location. Another barge, the Khian Sea, has been trying to unload its 15,000 ton cargo of ash from Philadelphia without success since September 1986 in ports as far away as the Caribbean and West Africa. Barges aimlessly carrying municipal waste pose the potential of illegal ocean disposal.

One existing marine garbage operation occurs with the unloading of New York City garbage at the 3,000 acre Fresh Kills landfill in Staten Island. Garbage is loaded at marine transfer stations around the City and shipped by barge to the landfill. EPA says that the landfill and barging operations at the Fresh Kills landfill appears to be a significant source of dispersed floatables. As a result of a lawsuit initiated by the Township of Woodbridge, New Jersey (*Township of Woodbridge* v. *City of New York,* Civil Action No. 79–1060 (D.C.N.J.)), a consent order was entered which requires New York City to take a series of measures to clean up its marine transfer stations, garbage barges, and the Fresh Kills landfill to reduce the amount of floatable garbage polluting the water. EPA has not to date taken enforcement actions to stop the discharge of garbage form these operations under its existing authority and has not established any operating procedures to regulate garbage barge operations.

*Infectious Wastes.*—EPA has had authority under the Resource Conservation and Recovery Act since 1976 to regulate the transportation and disposal of infectious waste, including the tracking of these wastes from cradle to grave. EPA has chosen to issue guidelines on proper infectious waste management rather than establish a tracking system and regulate the proper disposal of these wastes.

After last summer's garbage washups, 27 Senators wrote to EPA urging the agency to use its authority to establish a tracking system for infectious hospital wastes. In repsonse, EPA held a meeting with experts to discuss infectious waste disposal and on June 2, 1988, EPA issued an advanced notice of proposed rulemaking seeking comment on what Federal action is necessary to address the problem.

## DEVELOPMENT OF THE LEGISLATION

On October 2, 1987, Senators Lautenberg and Bradley introduced S. 1751, the Shore Protection Act. This bill is the basis of title I of the bill reported by the Committee.

On July 11, 1988, Senators Lautenberg, Moynihan, Bradley and D'Amato introduced S. 2628, the New Jersey-New York Medical

Waste Tracking Act of 1988. This bill forms the basis of title II of the bill reported by the Committee.

SECTION-BY-SECTION ANALYSIS

*Title I*

Section 101 provides that title I may be cited as the "Shore Protection Act of 1988."

Section 102 defines certain terms used in title I. The term "municipal or commercial waste" is defined to include municipal garbage and refuse, commercial refuse, medical wastes, wood debris and other solid waste. The term is not intended to include materials which are transported for the purpose of recycling This term excludes debris solely from construction activities because this debris generally does not adversely affect coastal waters and shorelines. It also excludes sewage sludge regulated under title I of the Ocean Dumping Act and dredged or fill material regulated under either the Ocean Dumping Act, the Clean Water Act or the Rivers and Harbors Act of 1899.

The term "vessel" is defined to mean any watercraft (other than a private recreational watercraft of Federal vessel) used for the purpose of transporting municipal or commercial waste. This term is not intended to apply to a vessel just because it carries some waste. The primary purpose of the watercraft must be to transport municipal or commercial waste.

Finally, the term "coastal waters under the jurisdiction of the United States" covers coastal and estuarine waters up to the head of tidal influence to the seaward extent of the U.S. Exclusive Economic Zone.

Section 103 prohibits vessels from carrying municipal or commercial waste within the coastal waters under the jurisdiction of the United States without first obtaining a vessel identification number from the Coast Guard and displaying the number on the vessel in a clearly visible manner and location. This prohibition takes effect 240 days after the enactment of the Act.

The purpose of this requirement is to aid the Coast Guard in its enforcement of the Ocean Dumping Act, the Marine Plastic Pollution Research and Control Act of 1987 and other applicable Federal laws to prevent the illegal disposal of waste in coastal and ocean waters. First, this requirement establishes a means to identify the universe of vessels which are transporting these wastes, allowing the Coast Guard to focus its enforcement efforts. Any vessel which does not have an identification number is in violation of the Shore Protection Act. Second, the provision serves as a deterrent to vessel operators who might consider illegally dumping their municipal or commercial waste knowing that the Coast Guard's capacity to track such vessels has been enhanced.

The Coast Guard is authorized to combine applications for vessel identification numbers with any other required application so long as a separate list of vessels subject to the requirements of this Act is maintained and the information requirements are consistent with those required under this Act.

Section 104 provides that sixty days after the enactment of this Act, waste sources, receiving facilities, and vessels must comply

with certain waste handling practices. EPA is required to promulgate regulations further defining these requirements. The regulations may require the submission and adoption by each affected party of an Operations and Maintenance Manual identifying procedures to be used to prevent, report, contain, and clean up any deposits of municipal or commercial waste.

The purpose of this section is to assure that municipal or commercial waste is not deposited in the water. The bill requires vessels to use nets or other means to prevent the spilling of municipal or commercial waste into the water. A single or combination of methods may be used, including the use of vessels specifically designed for the purpose of transporting waste. EPA will be responsible for specifying measures that are necessary to prevent municipal or commercial waste spillage. The bill also provides that in the event waste is deposited in the water that it be contained and promptly cleaned up.

Section 105 establishes penalties for violations of the Act as well as actions that the Coast Guard and EPA are authorized to take to enforce the Act. These provisions are similar to enforcement provisions found in other environmental laws.

Section 106 requires EPA to conduct a study on the need for tracking systems for vessels to assure that municipal and commercial waste is not deposited in coastal waters under the jurisdiction of the United States. This section also requires the Coast Guard to study various tracking systems that might be applicable to vessels carrying municipal or commercial waste. Both studies are required to be completed within 24 months after enactment of this Act.

Section 107 requires the Coast Guard to conduct periodic checks of vessels carrying municipal or commercial waste to assure that such vessels have vessel identification numbers and are complying with Federal environmental laws. This section also requires the Coast Guard to promulgate regulations to require the installation of tracking devices if determined to be necessary in the report prepared by EPA pursuant to section 106.

Section 108 provides that the Shore Protection Act does not supercede any other provisions of Federal or State law, preempt any State from imposing any additional requirements or preclude any citizen, State, or local government from taking any authorized action for activities which are or may be violations of this Act.

Section 109 authorizes $1,500,000 to the Environmental Protection Agency for fiscal years 1989 and 1990 to carry out this title.

*Title II*

Section 201 provides that title II may be cited as the "New Jersey-New York Medical Waste Tracking Act of 1988."

Section 202(a) requires that 9 months after enactment of this Act, EPD must promulgate regulations to establish a demonstration program for the tracking of medical waste generated and disposed of in the States of New York and New Jersey. In the regulations, EPD must define "medical waste," establish a manifest system for the accountability and tracking of medical waste from their point of generation to point of disposal and include such other requirements as may be necessary to protect human health and the environment. The regulations must apply to owners and operators

of facilities for the treatment, storage, transport and disposal of medical waste.

This section does not specify the type of tracking system EPD must establish. The Committee expects EPA to work closely with State and local health and environmental officials in developing this tracking system.

Section 202(b) authorizes EPD to obtain access to all records relating to medical waste and any samples of such waste from any person who generates, stores, treats, transports, or disposes of medical waste.

Section 202(c) establishes penalties for violations of the Act.

Section 202(d) provides that nothing in this section shall prohibit any State or local government from imposing any requirements for the control or monitoring of medical waste that are more stringent than those imposed by this section.

Section 202(e) requires EPD to prepare a report within 3 years of the enactment of this section on the progress and success of the manifest tracking system required to be developed.

Section 202(f) authorizes $300,000 for fiscal years 1989, 1990 and 1991 for the Environmental Protection Agency to carry out this title.

Section 202(g) provides that nothing in this title shall be construed to affect or modify the authorities or requirements of the Solid Waste Disposal Act.

## HEARINGS

On November 4, 1987, the Subcommittees on Environmental Protection and Hazardous Wastes and Toxic Substances held a joint hearing on S. 1751. Appearing were Senator Bill Bradley, Congressmen William Hughes and James Saxton, Mayor John Winterstella of Manasquan, New Jersey, and representatives of the Environmental Protection Agency, the Coast Guard, the State of New Jersey and environmental organizations. Further testimony on the problem of garbage in coastal waters and beaches was heard by the Subcommittee on Environmental Protection at an April 20, 1988 hearing on marine environmental conditions and trends.

## ROLLCALL VOTES

On May 11, 1988, the Subcommittee on Environmental Protection met to consider S. 1751. An amendment in the nature of a substitute was adopted and the bill was ordered reported to the full committee by voice vote.

The Committee approved the substitute as reported by the Subcommittee on July 14, 1988 and, after adopting an amendment by Senators Lautenberg and Moynihan to establish a regional medical waste tracking program in New Jersey and New York, ordered the bill reported by voice vote.

## REGULATORY IMPACT

Section 11(b) of rule XXVI of the Standing Rules of the Senate requires the committee to evaluate the regulatory impact of the reported bill.

Under section 103 of the bill, the Coast Guard is required to issue vessel identification numbers for vessels carrying municipal or commercial waste in coastal wasters under the jurisdiction of the United States. Under section 104 of the bill, the Environmental Protection Agency must establish waste handling regulations. Under Section 202, the Environmental Protection Agency must promulgate regulations to establish a medical waste tracking program for waste generated or disposed of in New Jersey or New York. It is not expected that any of these provisions will impose any significant new regulatory burden.

### COST OF THE LEGISLATION

Section 403 of the Congressional Budget and Impoundment Control Act requires each report to contain a statement of the cost of the reported bill prepared by the Congressional Budget Office. That statement follows:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
*Washington, DC, August 5, 1988.*

Hon. QUENTIN W. BURDICK,
*Chairman, Committee on Environment and Public Works,*
*U.S. Senate, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the attached cost estimate for S. 1751, the Shore Protection Act of 1988.

If you wish further details on this estimate, we will be pleased to provide them.

Sincerely,

JAMES L. BLUM,
*Acting Director.*

### CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

1. Bill number: S. 1751.
2. Bill title: Shore Protection Act of 1988.
3. Bill status: As ordered reported by the Senate Committee on Environment and Public Works, July 14, 1988.
4. Bill purpose: S. 1751 would require persons transporting municipal or commercial waste by water to obtain a vessel identification number from the U.S. Coast Guard (USCG). The USCG would be authorized to collect a fee of up to $1,000 per vessel for issuing the number.

The bill would require the Environmental Protection Agency (EPA) to promulgate regulations to ensure that municipal and commercial waste is not deposited into water. The agency also would be required to undertake a study of the need, availability and effectiveness of various tracking systems that might be used to enforce marine protection laws.

Periodic inspection of vessels to enforce the identification system (as well as the provisions of other marine protection legislation) would be the responsibility of the USCG, which would have the authority to revoke identification numbers, deny port entry, or assess penalties established under Section 5. In addition, if the EPA deter-

mines that a tracking system is necessary for proper enforcement, the USCG would be directed to issue regulations requiring the installation of any necessary devices.

For the purposes of carrying out these provisions, the bill would authorize the appropriation of $1.5 million for each of fiscal years 1989 and 1990.

5. Estimated cost to the Federal Government:

[By fiscal year, in millions of dollars]

| | 1989 | 1990 | 1991 | 1992 | 1993 |
|---|---|---|---|---|---|
| Authorization level | 1.5 | 1.5 | | | |
| Estimated outlays | 1.3 | 1.5 | 0.2 | | |

The costs of this bill fall within budget function 300.

Basis of estimate: For the purposes of this estimate, it is assumed that S. 1751 will be enacted by October 1, 1988 and that the full amounts authorized will be appropriated for each fiscal year. Outlays have been estimated on the basis of historical spending patterns for similar programs. Estimates of collections from penalties or vessel identification fees cannot be made at this time; however, these are not expected to be significant. Beginning in fiscal year 1991, the USCG may incur additional costs to promulgate tracking device regulations if the EPA's two-year study indicates the need for more effective enforcement methods. The additional cost to develop and implement the regulations is not expected to exceed $200,000, most of which would be spent in 1991.

6. Estimated cost to State and local governments: None.

7. Estimate comparison: None.

8. Previous CBO estimate: None.

9. Estimate prepared by: Deborah Reis.

10. Estimate approved by: C.G. Nuckols (for James L. Blum, Assistant Director for Budget Analysis).

## CHANGES IN EXISTING LAW

In the opinion of the Committee, it is necessary to dispense with the requirements of section 12 of rule XXVI of the Standing Rules of the Senate in order to expedite the business of the Senate.

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